

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)	
capacity as ATTORNEY GENERAL OF)	
THE STATE OF OKLAHOMA and)	
OKLAHOMA SECRETARY OF THE)	
ENVIRONMENT, C. MILES TOLBERT,)	
in his capacity as the TRUSTEE FOR)	
NATURAL RESOURCES FOR THE)	
STATE OF OKLAHOMA)	
PLAINTIFF)	
vs.)	05- CV-0329-TCK-SAJ
)	
TYSON FOOD, INC.,)	
)	
DEFENDANTS)	
)	
TYSON FOODS, INC.,)	
)	
THIRD PARTY PLAINTIFFS,)	
)	
vs.)	
)	
CITY OF TAHLEQUAH, et.al.)	
)	
Third Party Defendants)	

ANSWER TO THIRD PARTY COMPLAINT

COMES NOW, Jo Nan Allen, attorney for Third Party Defendant, John E.

Cotherman and answers the Third Party Complaint as follows:

Regarding, I. BACKGROUND, Third Party Defendant, John E. Cotherman (hereinafter "John E. Cotherman ") is without sufficient knowledge of the background and the same is denied.

1. John E. Cotherman is without sufficient knowledge of the allegations in the first sentence of Paragraph 1 and the same is denied. John E. Cotherman admits that

the State of Oklahoma has filed a complaint alleging the action and damages described in Sentence 2, 3, 4, 5, and 6.

2. John E. Cotherman is without sufficient knowledge of the allegation in the first sentence of Paragraph 2, and the same is denied. John E. Cotherman denies the second sentence, third sentence, and the fourth sentence. John E. Cotherman also denies the fifth sentence which is the accordingly sentence.

3. John E. Cotherman denies Paragraph 3.

4. John E. Cotherman denies the first sentence of Paragraph 4 applies to John E. Cotherman and questions the numerous allegations in the rural northeast of Oklahoma. John E. Cotherman is without sufficient knowledge of the second sentence of Paragraph 4 and the same is denied. John E. Cotherman admits the third sentence of Paragraph 4.

5. John E. Cotherman is without sufficient information of paragraph 5 of the first and second sentence and the same is denied. John E. Cotherman admits the third sentence of Paragraph 5.

6. John E. Cotherman is without sufficient information of the first sentence, second sentence and third sentence of paragraph 6 and the same is denied.

7. John E. Cotherman is without sufficient information of the first sentence, second sentence and third sentence of Paragraph 7 and the same is denied.

8. John E. Cotherman is without sufficient information of the first sentence in Paragraph 8 and the same is denied. John E. Cotherman admits the second sentence of Paragraph 8.

9. John E. Cotherman is without sufficient information of the first, second, third or fourth sentences in Paragraph 9 and the same is denied.

II. Parties

10. John E. Cotherman is without sufficient information of Paragraph 10 and neither admits or denies Paragraph 10.

11. John E. Cotherman is without sufficient information of Paragraph 11 and neither admits or denies Paragraph 11.

12. John E. Cotherman is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 12.

13. John E. Cotherman is without sufficient information of Paragraph 13 and neither admits or denies Paragraph 13.

14. John E. Cotherman is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 14.

15. John E. Cotherman is without sufficient information of Paragraph 15 and neither admits or denies Paragraph 15.

16. John E. Cotherman is without sufficient information of Paragraph 12 and neither admits or denies Paragraph 16.

17. John E. Cotherman is without sufficient information of Paragraph 13 and neither admits or denies Paragraph 17.

18. John E. Cotherman is without sufficient information of Paragraph 14 and neither admits or denies Paragraph 18.

III. Third Party Defendants

19. John E. Cotherman is without sufficient information of Paragraph 19 and neither admits or denies Paragraph 19.

20. John E. Cotherman is without sufficient information of Paragraph 20 through Paragraph 37 and neither admits or denies Paragraph 20 through Paragraph 37.

21. John E. Cotherman admits the first sentence in Paragraph 38, admits the second sentence in Paragraph 38. John E. Cotherman is without sufficient information of the third sentence of Paragraph 38 and neither admits or denies the third sentence. John E. Cotherman denies the fourth sentence of Paragraph 38 as only sand and gravel are removed; there is no release of chemicals such as phosphorus and other constituents into the IRW. John E. Cotherman denies the fifth sentence which is the accordingly sentence of Paragraph 38 and denies liability to the Third Party Plaintiffs as contribution claims can not be brought because of the Third Party Plaintiff's intentional conduct, that John E. Cotherman denies any legal or contract relationship with the Third Party Plaintiffs and denies indemnity liability under the federal common law of nuisance.

22. John E. Cotherman is without sufficient information of Paragraphs 39 through 169 and neither admits or denies Paragraphs 39 through 169.

23. John E. Cotherman specifically denies Paragraph 170.

IV. Jurisdiction and Venue

24. John E. Cotherman admits the first sentence of Paragraph 171. John E. Cotherman denies the second sentence. John E. Cotherman denies the third sentence as he has no acts or omissions that would require a law suit to be brought

against John E. Cotherman . John E. Cotherman denies the fourth sentence ashe has not contributed to the Illinois River problems and is not a responsible party. John E. Cotherman admits that the Court has jurisdictional over the issues of this case, but denies any liability as a defendant.

25. John E. Cotherman admits jurisdiction in Paragraph 172, but denies any activity on property in Oklahoma that would cause any liability.

26. John E. Cotherman admits that the Illinois River Watershed is situated in the Northern District, but denies the third party claims alleged in paragraph 173.

27. John E. Cotherman is without sufficient information of paragraphs 174 through 195 so neither admits or denies Paragraphs 174 through 195.

28. John E. Cotherman denies Paragraph 196.

29. John E. Cotherman admits Paragraph 197 and asserts that John E. Cotherman is not responsible for or contributed to any pollution in the Illinois River.

30. John E. Cotherman is without sufficient information in paragraph 198 and 199 to admits or denies notice against those cities, so denies Paragraph 198 and 199.

31. John E. Cotherman denies Paragraph 200 as it applies to John E. Cotherman .

32. John E. Cotherman denies Paragraph 201 as it applies to John E. Cotherman .

33. John E. Cotherman is without sufficient information of Paragraph 202 and neither admits or denies the Paragraph.

34. John E. Cotherman denies Paragraph 203.

35. John E. Cotherman is without sufficient information of Paragraph 204 and neither admits or denies the Paragraph.

36. John E. Cotherman denies Paragraph 205.

37. John E. Cotherman denies Paragraph 206.

38. John E. Cotherman denies Paragraph 207 as it applies to John E. Cotherman as a Third Party Defendants.

39. John E. Cotherman denies Paragraph 208 as it applies to John E. Cotherman as a Third Party Defendants.

40. John E. Cotherman denies Paragraph 209 and further alleges that he has not released any hazardous substances.

41. John E. Cotherman denies Paragraph 210, denies any releases, any tests or other activities he would be responsible for and denies any responsibility for any damages to the Defendant.

42. John E. Cotherman denies Paragraph 211, denies any responsibility for paying for future response costs of Third Party Plaintiffs.

43. John E. Cotherman is without sufficient information of Paragraph 212 and neither admits or denies the Paragraph.

44. John E. Cotherman is without sufficient information of Paragraph 213 and neither admits or denies the Paragraph.

45. John E. Cotherman is without sufficient information of Paragraph 214 and neither admits or denies the Paragraph.

46. John E. Cotherman denies Paragraph 215.

47. John E. Cotherman denies Paragraph 216 and any liability for respective share of damages.

48. John E. Cotherman is without sufficient information of Paragraph 217 and neither admits or denies the Paragraph.

49. John E. Cotherman is without sufficient information of Paragraph 218 and neither admits or denies the Paragraph.

50. John E. Cotherman denies Paragraph 219 and any responsibility for release of some of the same constituents of poultry liter.

51. John E. Cotherman denies Paragraph 220.

52. John E. Cotherman denies Paragraph 221 as it applies to the John E. Cotherman . He denies that John E. Cotherman should be responsible for any injunctive relief, clean-up, assessment or remediation efforts.

53. John E. Cotherman denies the Prayer for Relief and asks that the Court award attorney fees and costs for having to defend this lawsuit.

AFFIRMATIVE DEFENSES

54. John E. Cotherman , Third Party Defendant, further asserts that John E. Cotherman is entitled to the defenses of estoppel, laches, failure to timely file, contributory negligence, assumption of risk, that Third Party Plaintiffs Cerla claim is barred because of Third Party Plaintiff's intentional conduct, that John E. Cotherman denies any legal or contractual relationship with the Third Party Plaintiffs, that John E. Cotherman denies any liability under the federal common law of nuisance and under the Restatement of Torts §886A (3) which does not allow a right of contribution if the Third party Plaintiffs intentionally caused the harm, and that Third Party Plaintiffs has

failed to state a claim upon which relief can be granted and further asserts any other affirmative defenses available from facts developed during discovery.

55. Wherefore, Third Party Defendant, John E. Cotherman , prays that Third Party Plaintiffs take nothing on their Petition and that the Third Party Defendants, John E. Cotherman be awarded reasonable attorney fees and costs.

Therefore John E. Cotherman request damages for the Third Party Plaintiff's filing a frivolous lawsuit and all attorney fees and costs of defending this lawsuit and all other and further relief as it is just and appropriate.

John E. Cotherman , Third Party Defendant

/s/ Jo Nan Allen
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CERTIFICATE OF SERVICE

I certify that on the 25th day of April, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.

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I hereby further certify that on this 25th day of April, 2006, I mailed a true and correct copy of the above document to the following who are not registered with the ECF System by depositing the same into the United States Mail with proper Postage prepared thereon:

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